

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5925

PETITION OF MICHAEL R. DREEBEN AND LILA FENDRICK

(Hearing held October 22, 2003)

OPINION OF THE BOARD

(Effective date of Opinion, November 6, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-. The petitioners propose to construct a second-story addition that requires a 3.33 foot variance as it is within 3.67 feet of the side lot line setback. The required setback is seven (7) feet.

Miche Booz, an architect, represented the petitioner at the public hearing.

The subject property is Lot 91, Block 1, M. Martins 3rd Addition to Chevy Chase Subdivision, located at 3518 Bradley Lane, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 5211114).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a second-story addition over an existing non-conforming one-story structure.
2. The petitioner testified that the existing dwelling is located in the eastern side yard setback and that the new construction will not expand the footprint of the existing structure.
3. Mr. Booz testified that the addition's roof line will be integrated into the existing roofline of the house and that the addition will be the same length as the existing one-story structure. See, Exhibit No. 5(a).

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

A second-story addition will be built over an existing one-story structure. The proposed construction will not expand the footprint of the existing structure. The Board finds that this is an extraordinary circumstance and that the strict application of the regulations would result in practical difficulties to the property owners if the variance were denied.

The Board notes that the new construction will connect the gap in the home's existing second-story.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the second-story addition is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that proposed addition will not materially change the view of the property for the neighboring homes and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 3.33 feet from the required seven (7) foot side lot line setback for the construction of a second-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(i).

The Board adopted the following Resolution:

Be it resolved by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board members Donna L. Barron and Louise L. Mayer were necessarily absent and did not participate in this Resolution. On a motion by Donald H Spence, Jr., Chairman, seconded by Angelo M. Caputo, with Allison Ishihara Fultz, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 6th day of November, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.